

Appl. No. 10/079,102  
Amendment and/or Reply  
to the FINAL Office Action of 14 September 2005

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### REMARKS / DISCUSSION OF ISSUES

Claims 1-5, 7-15 and 17-20 are pending in the application upon entry of this amendment. Claims 1 and 15 are the independent claims.

Applicant gratefully acknowledges the indication of approval of the drawing corrections submitted on March 8, 2004. Formal drawings including the changes were filed on May 6, 2005.

#### **Allowed Claims and Allowable Subject Matter**

Applicant gratefully acknowledges the notification that claims 1-5, 7-14, 19 and 20 are allowed. Applicant also gratefully acknowledges the indication of allowability of claim 18.

#### **Rejections under 35 U.S.C. § 103**

Claims 15 and 17 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Chuang* (U.S. Patent 5,800,311). For at least the reasons that follow, it is respectfully submitted that claims 15 and 17 are patentable over the applied art.

Claim 15 is drawn to an optomechanical system including:

***"...a plurality of magnets attached to the housing and magnetically attracted to the sphere, the magnets so constructed and arranged in the housing such that the sphere has freedom for prescribed movement when required by overcoming the magnetic attraction between the sphere and the magnets, but is otherwise held stationary by the magnetic attraction."***

Applicant respectfully submits that *Chuang* lacks at least the disclosure of at least the noted feature of claim 15. *Chuang* does disclose a magnet ring 34 that cooperates with coils 53 to provide current to lighting elements 43 to indicate rotation of the sphere. As the Office notes, the reference does not disclose a plurality of magnets. Moreover, there is no teaching or suggestion in *Chuang* to incorporate a plurality of magnets and especially the disclosure of a plurality of

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magnets constructed and arranged in a housing to maintain the sphere stationary excepting the rotation as specifically set forth in claim 15.

Furthermore, the Examiner asserts that the addition of multiple magnets to the device of *Chuang* would have been obvious to one skilled in the art in order to provide additional control of the sphere.

Applicant respectfully submits that this assertion is the impermissive use of hindsight in view of Applicant's disclosed invention. The one magnetic ring in *Chuang* is used to provide a magnetically induced current to lighting elements. The reference does not teach or suggest the use of more than one magnet for this purpose, and does not disclose the use of the magnet for any other purpose, especially the maintaining of the sphere as featured in claim 15. Notably, at column 5, lines 55-61, *Chuang* discloses the selection of LEDs as the lighting elements because of the relatively small amount of electricity these devices require and thus magnet 34 can support the electrical needs of the LEDs. A reasonable inference from this portion of *Chuang* would be that one magnet is all that is needed.

Respectfully, from the teachings of *Chuang*, the leap to multiple magnets is unobvious; and the leap to include multiple magnets constructed and arranged as set forth in claim 15 based on *Chuang* can only be made using Applicant's invention as a template for its own reconstruction. Clearly, this is improper in the determination of patentability. Accordingly, the rejection set forth in the Office Action based on *Chuang* is improper and should be withdrawn.

Applicant respectfully again submits that the reference to *Chuang* qualifies as and thus cannot serve to establish a rejection under 35 U.S.C. § 103(a). To qualify as analogous art, a reference must be within the **inventor's field of endeavor or must be reasonably pertinent the specific problem with which the inventor was involved.**

*Chuang* relates to a wrist exerciser, which is outside the realm of the optomechanical system of claims 15 and 17. These technical fields are highly disparate and thus one skilled in the art of optomechanical systems would not consider wrist exercises within his or her field of endeavor.

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Furthermore, claim 15 addresses the securing of the sphere 105 with a plurality of magnets. Contrastingly, *Chuang* incorporates a magnetic ring 34 in cooperation with coils 53 to provide current to lighting elements indicating the movement of a rotator during exercise. As noted above, *Chuang* lacks the disclosure of securing a sphere with a plurality of magnets as recited in claim 15. Therefore, *Chuang* is not reasonably pertinent to the specific problem that the invention of claim 15 addresses. (See column 4, lines 16-54 of the reference to *Chuang*.)

For at least the reasons set forth above, it is respectfully submitted that the rejection of claim 15 based on *Chuang* is improper. Additionally, the rejection of claim 17, which depends from claim 15, is similarly improper. It is respectfully requested that the rejection of claims 15 and 17 be withdrawn and that claims 15 and 17 be allowed.

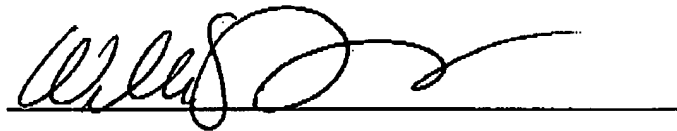
### Conclusion

In view of the foregoing, Applicant respectfully requests that the objections and rejections of record be withdrawn, and all pending claims be allowed. If any remaining issues can be resolved through a personal or telephonic interview, the Examiner is invited to contact the undersigned at the telephone number listed below.

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Respectfully submitted on behalf of:  
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